



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

US
4673
75

Binney. Eulogy on John Marshall.
1835

LS 4673.75



HARVARD
COLLEGE
LIBRARY



Presented
1885
To Professor Cheever

from his friends

W. H. H. H.

EULOGY ON
JOHN M. A. S. H. E. E.

EULOGY ON JOHN MARSHALL.

©

AN

EULOGY

ON THE

LIFE AND CHARACTER

OF

JOHN MARSHALL,

Chief Justice of the Supreme Court

OF THE

UNITED STATES.

DELIVERED AT THE REQUEST OF THE COUNCILS OF PHILADELPHIA,
ON THE 24TH SEPTEMBER, 1835.

BY HORACE BINNEY.

PHILADELPHIA:

PRINTED BY J. CRISSY AND G. GOODMAN, 4 MINOR STREET.

1835.

~~7325, 28~~

U.S. 4673.75

1855. Jan^y 18.
The Gift of
M^r Charles D. Cleveland,
of Philadelphia.

IN SELECT COUNCIL,

July 9, 1835.

WHEREAS means have been already taken to express the public sense of the loss which the country has sustained, by the death of the late Chief Justice of the Supreme Court of the United States, and the profound grief which has affected the community: And whereas, it is fit that the actions, character and services of the illustrious dead should be adequately portrayed and commemorated: Therefore,

Resolved, by the Select and Common Councils, that HORACE BINNEY, Esq. be invited to deliver an Eulogium on the life of JOHN MARSHALL.

Common Council concurred.

From the Minutes.

JOS. G. CLARKSON,

Clerk S. C.

IN COMMON COUNCIL,
September 24, 1835.

Resolved, That the thanks of the Select and Common Councils, be presented to the Hon. HORACE BINNEY, for his appropriate and eloquent Eulogy on the life and character of the late CHIEF JUSTICE MARSHALL, and that a copy be requested for publication.

Resolved, That the thanks of the Select and Common Councils, be presented to the Right Rev. WILLIAM WHITE, D. D. for the gratifying part which he bore in the solemnities of the occasion, and that he be requested to furnish a copy of his prayer, to be published with the proceedings of the day.

Select Council concurred.

From the Minutes.

ROBERT HARE, Jr.
Clerk C. C.

SEPTEMBER 26, 1835.

RT. REV. SIR,

We have been directed to communicate to you the annexed resolution, unanimously adopted by the Select and Common Councils, testifying their deep sense of their obligation for the part you bore in the solemnities of the 24th inst., and requesting you would favour them with a copy for publication, of the appropriate and eloquent prayer by which the address of Mr. Binney was preceded.

We congratulate ourselves, Right Rev. Sir, that in paying this tribute to the memory of Chief Justice Marshall, we were honoured with the aid of one of his contemporaries, like himself distinguished by the talents that adorn, and the virtues that dignify our nature.

With the highest respect,

We remain your

Obt. Serv'ts.

JOS. R. CHANDLER,
HENRY J. WILLIAMS,
LEMUEL LAMB,
DENNIS M'CREDY,
JOSHUA LIPPINCOTT,
JOHN P. WETHERILL,

} COMMITTEE.

To the Rt. Rev. William White, D. D.

Bishop of the Diocese of Pennsylvania.

TO MESSRS. JOSEPH R. CHANDLER, HENRY J. WILLIAMS, LEMUEL
LAMB, DENNIS M'CREDY, JOSHUA LIPPINCOTT, AND JOHN P.
WETHERILL.

GENTLEMEN,

I enclose to you the document, which the Select
and Common Councils of the City have done me the
honour to desire.

And I am, very respectfully, gentlemen,

Your very humble Servant,

WM. WHITE.

SEPTEMBER 26, 1835.

SIR,

We have the honour to enclose a resolution, unanimously adopted by the Select and Common Councils, expressing their thanks for your admirable Eulogy on the late Chief Justice Marshall, and requesting a copy for publication.

The personal history of such a man, always highly interesting and instructive, is at the present moment most peculiarly so ; and you, sir, have rendered the lessons it affords still more effective, by the force and beauty with which they are illustrated.

We have the honour to be,

With the greatest respect,

Your obt. Serv'ts.

JOS. R. CHANDLER,
HENRY J. WILLIAMS,
LEMUEL LAMB,
DENNIS M'CREDY,
JOSHUA LIPPINCOTT,
JOHN P. WETHERILL,

} COMMITTEE

TO H. BINNEY, ESQ.

PHILADELPHIA, SEPT. 29, 1835.

GENTLEMEN,

I have the pleasure to send you the Eulogy upon Chief Justice Marshall, agreeably to the resolution of the Councils, and to return my unfeigned thanks for the honour which those bodies and their committee have done me, by all their proceedings and expressions in relation to the subject.

I have the honour to be,

With sincere respect,

Your obt. serv't.

HOR. BINNEY.

TO

JOSEPH R. CHANDLER,
HENRY J. WILLIAMS,
LEMUEL LAMB,
DENNIS M'CREDY,
JOSHUA LIPPINCOTT,
JOHN P. WETHERILL,

ESQUIRES.

AN ADDRESS

AND A FORM OF PRAYER,

ON THE OCCASION OF THE DECEASE OF THE HON. JOHN MARSHALL, ESQ.
LATE CHIEF JUSTICE OF THE UNITED STATES, DELIVERED ON THE
24TH DAY OF SEPTEMBER, AND PRECEDING THE DELIVERY OF AN
EULOGIUM BY HORACE BINNEY, ESQ.

Brethren,

Forasmuch as it hath pleased Almighty God, in his wise Providence, to take out of this world the Hon. John Marshall, Esq. late Chief Justice of the United States, let us bow in lowly submission under this afflictive dispensation. Let us offer up our thanksgivings, for the good example, and for the signal services of the eminent deceased. And let us pray, that through Divine Grace, we may make a religious improvement of the mournful event commemorated; so that after this transitory life shall be ended, we may rest with the Spirits of just men made perfect; and finally may attain to the resurrection of the righteous, at the second coming of our Lord and Saviour Jesus Christ, in glorious majesty, to judge the world.

Almighty God, with whom do live the Spirits of them who depart hence, in the Lord, and with whom the souls of the faithful, after they are delivered from the burthen of

the flesh, are in joy and felicity ; we give thee thanks for all those thy servants, who having finished their course in faith, do now rest from their labours. Especially we adore thy name, for the eminent virtues and for the illustrious actions of the late Chief Justice of the United States. While we acknowledge thy undeserved mercies in having given him, in times of difficulty and danger, to the counsels and to the administration of justice in this land, we pray that the present remembrance of him may impress us with due gratitude for the benefits, which through his agency, have been extended to us by thee, the Supreme Author of all good. May his memory be an incentive to all who shall come after him in our Courts of Justice, and in all the employments of the state. And may posterity, while they shall inherit the lustre of his name, enjoy the benefit of his life, in a continuance of the happy consequences of his labours, and in a succession of great and good men, to the glory of thy name, and to the prosperity of thy people, to the end of time. We pray also that we, with all thy servants who have departed this life in the faith and the fear of thy holy name, may rest in thee, and have at last our perfect consummation of bliss in body and in soul in thy eternal kingdom, through Jesus Christ our Lord. Amen.

O God, whose days are without end, make us, we beseech thee, sensible of the shortness and of the uncertainty of this mortal life ; and may we be resigned to thy will in

every event of life and of death; and especially in the loss which we now deplore. The same we ask for thy servants the family of the deceased, and for all allied to him in kindred or in friendship: beseeching thee that they may be comforted under their afflictions by the promises of thy word, so as not to sorrow as those who have no hope. We pray for them and for ourselves, that thy Holy Spirit may lead us through this vale of misery, in righteousness and holiness, before thee all our days; so that when we shall have served thee in our generation, we may be gathered to our fathers, having the testimony of a good conscience, in the communion of the Catholic Church, in the confidence of a sure faith, in the comfort of a reasonable, religious and holy hope, in the favour of thee our God, and in charity with all mankind. These things we ask through the merits of Jesus Christ, thy son, our Lord. Amen.

O God, who hast instructed us in thy holy word, to render honour to whom it is due, we implore thy blessing on the celebration which is to follow. Support, in the discharge of this duty, thy servant to whom it is committed. May this tribute of gratitude be worthy of the name which it commemorates. May the inhabitants of this land, while they join in or approve of our present celebration, feel it a call to a due reverence of the laws, and of submission to the administration of them; and may all, who like the venerable deceased, have been eminent benefactors to mankind, like

him, also find grateful fellow citizens, honouring them in their lives and in their deaths, which we ask through Jesus Christ our Lord. Amen.

“Now the God of Peace, who brought again from the dead our Lord Jesus Christ, that great shepherd of the sheep, through the blood of the everlasting covenant, make you perfect in every good work, to do his will; working in you that which is well pleasing in his sight, through Jesus Christ our Lord, to whom be glory for ever and ever. Amen.*

HEB. XIII. 20, 21.

*The above (*mutatis mutandis*) is the same with that used above thirty-five years ago, on the occasion of the commemoration of President Washington, in presence of the then President and Congress, and before an Eulogy by General Henry Lee.

EULOGY ON

JOHN MARSHALL.

FELLOW CITIZENS,

The Providence of God is shown most beneficently to the world, in raising up from time to time, and in crowning with length of days, men of pre-eminent goodness and wisdom. Many of the undoubted blessings of life, which minister, and were designed to minister, to the elevation of man, tend, nevertheless, by developing the inferior qualities of his mixed nature, to impair the authority and to deaden the aspirations of his immortal spirit. The unnumbered contributions to the sum of physical enjoyment, which a bountiful Creator has spread around us, afford such a prodigal repast to the senses, that if man were not sometimes allured from the banquet by the example of wisdom, or driven from it by the voice of conscience or of inspiration, he would "decline so low from virtue" as to become incapable of discerning its beauty, or of rising to its delights. If there was not something within or without, to remind him that these pleasures of sense were designed to alleviate the labours of virtue in her arduous career, and not to seduce her from it, it might raise the irreverent question, whether the frame of man was adequately devised to contend with the temptations which surround him. But the wisdom of the Creator is justified in all his works. It is a provision in

the moral government of the world, to hold out constantly to mankind, both the example of virtue for imitation, and its precepts for obedience; and the moral constitution of man is never so depraved, as to be totally insensible to either. Sometimes the inducement to virtue is derived from the catastrophe which closes the career of vice; sometimes from that internal monitor, which however oppressed by a load of crimes, has always sufficient remains of life to breathe its complaints into the hearts of the guilty. To the sensual it often comes in the pains and disgusts of satiety, and occasionally to the most hardened in the awakening denunciations of future responsibility. The good find it in the pleasures of beneficence, and the wise in the enjoyments of wisdom. It is addressed severally to each, and with endless variety corresponding to his personal case and condition. But it comes to all, and at all times, and with most persuasive influence, in the beautiful example of a long career of public and private virtue, of wisdom never surprised, of goodness never intermitted, of benignity, simplicity, and gentleness, finally ending in that hoary head which "is a crown of glory, if it be found in the way of righteousness." To this example all men of all descriptions, pay voluntary, or involuntary homage. There is no one from whom the impress of the Deity is so wholly effaced; as to be insensible to its beauty. The very circumstance of its duration affects all hearts with the conviction, that it has the characters of that excellence which is eternal, and it is thus sanctified while it still lives and is seen of men. When death has set his seal upon such an example, the universal voice proclaims it as one of the appointed sanctions of virtue, and if great public services are blended with it, communities of men come as with one heart to pay it the tribute of their praise, and to pass it to succeeding generations, with the attestation of their personal recognition and regard.

It is such an example and such a motive, my fellow citizens, that have led the Councils of this city to commit to my hands the duty of expressing your admiration and gratitude for the illustrious virtues, talents, and services of **JOHN MARSHALL**. His last hours were numbered within your city. His unfading example here received its last finish. You were the first to mourn by the side of his venerable remains, after the spirit which enlightened him had gone to its reward; and you now claim to record your reverence for a name which after first coming to distinction in its native state, and then for a long course of years shedding lustre upon the whole country, has finally ceased to be mortal upon this spot.

If its defective commemoration by me, could mar the beauty of this example, I should shrink from it, as from a profanation: but it is the consolation of the humblest, as it ought to be of the most gifted, of his eulogists, that the case of this illustrious man is one, in which to give with simplicity, the record of his life, is to come nearest to a resemblance of the great original; and to attempt to go beyond it, is

with taper light
To seek the beauteous eye of Heaven to garnish.

JOHN MARSHALL was born at a place called Germantown, in Fauquier county, Virginia, on the 24th of September, 1755, eighty years ago this day. It was a little more than two months after the memorable defeat of Braddock had brought to the notice of the British empire the name of George Washington, then a youth of twenty-three, whose courage and conduct, in that disastrous surprise, were afterwards to be the grateful theme of his faithful historian and friend.

His grandfather, of the same name, was a native of Wales, who settled in Westmoreland county about the year 1730, where he married Elizabeth Markham, a native of England. Of four sons and five daughters of this marriage, Thomas, the father of the Chief Justice, was the oldest, and inherited the family estate called "Forest," consisting of a few hundred acres of poor land in Westmoreland. He removed from this county to Fauquier soon after he attained manhood, and having intermarried with Mary Keith, by which he became connected with the Randolphs, he sat down upon a small farm at the place where John Marshall, his oldest son, was afterwards born. The great proprietor of the Northern Neck of Virginia, including Fauquier, was at that time Lord Fairfax, who gave to George Washington the appointment of Surveyor in the western part of his territory, and Washington employed Thomas Marshall in the same business. They had been near neighbours from birth, associates from boyhood, and were always friends.

Thomas Marshall was a man of extraordinary vigour of mind, and of undaunted courage. When his associate and friend received the command of the American armies in the war of the Revolution, he left his estate and his large family, then or soon after comprising fifteen children, and embarked in the same cause. Filial respect and affection, have recorded of him, that he commanded the third Virginia Regiment upon the continental establishment, and performed with it the severe duty of the campaign of 1776. On the 26th of December in that year, he shared the peril as well as the glory of that enterprise, not surpassed in vigour or brilliancy by any thing in the Revolution, in which the Hessian regiments at Trenton were surprised and captured, by troops who had passed the previous night in contending with the snow and hail and the driving ice of the Delaware.

He was afterwards, on the 11th September, 1777, placed with his regiment on the right of the American army at Brandywine, and received the assault of the column led by Lord Cornwallis. "Though attacked by much superior numbers, the regiment maintained its position without losing an inch of ground, until both its flanks were turned, its ammunition nearly expended, and more than one half of the officers and one third of the soldiers were killed or wounded. Colonel Marshall, whose horse had received two balls, then retired in good order to resume his position on the right of his division, but it had already retreated."* We may believe that from such a father, the son would derive the best preparation for a career that was to exemplify the virtues of fortitude, patriotism, and invincible constancy in the maintenance of what he deemed to be right.

After residing a few years at Germantown, the father removed with his family about thirty miles farther west, and settled in the midst of the mountains east of the Blue Ridge, at a place called "The Hollow," in a country thinly peopled and destitute of schools, but remarkable for the salubrity of its atmosphere, and the picturesque beauty of its mountain scenery. It was a place altogether admirable for the formation of a physical constitution, and for the development of its powers by athletic exercises and sports: and it was here that the son remained until his fourteenth year, laying the foundation of that vigorous health which attended him through life, and deriving from his father all the training in letters, which a then frontier county of Virginia, or the moderate resources of a farmer, could afford. At the age of fourteen he was sent for instruction in Latin to a Clergyman named Campbell, who resided in Westmoreland, with whom

* 1 Marshall's Washington, 158.

he remained about a year, having for one of his fellow students James Monroe, afterwards President of the United States; he then returned to his father, who about that time removed to the place called Oak Hill, which still remains in the family. He here received for the term of another year, some further instruction in Latin from a Scotch gentleman named Thomson, who was the clergyman of the parish and lived in his father's family; and this was the whole of the classical tuition he ever obtained. But his father, though he had not himself enjoyed the benefit of an early education, was devoted to the cultivation of his children, and sought by personal instruction to supply to them what he had not the means of deriving from seminaries of learning. He was a practical surveyor, adequately acquainted with the Mathematics and Astronomy, and familiarly conversant with History, Poetry, and general literature, of which he possessed most of the standard works in our language; and these were the means, which, under his fostering attention, seconded by extraordinary facility in his pupil, and by a sweetness of temper which was his characteristic from birth, completed all the education the son received. It is the praise and the evidence of the native powers of his mind, that by domestic instruction, and two years of grammatical and classical tuition obtained from other sources, Mr. Marshall wrought out in after life a comprehensive mass of learning both useful and elegant, which accomplished him for every station that he filled, and he filled the highest of more than one description.

The war of the revolution is known to have been in preparation for some years before the first blow was struck. In all the colonies, the topics of controversy were familiar to the youth, and in none more than in Virginia. The most temperate spirits in the land looked to arms as the inevitable recourse; and by their writings, their speeches,

their daily and familiar conversation, spread the preparatory temper around them. It was the retired soldier of Mount Vernon, who in April 1769, thus wrote to his friend George Mason, who afterwards drafted the first constitution of Virginia: "At a time when our lordly masters in Great Britain will be satisfied with nothing less than a deprivation of American freedom, it seems highly necessary that something should be done to avert the stroke, and maintain the liberty which we have derived from our ancestors. But the manner of doing it, *to answer the purpose effectually*, is the point in question. That no man should scruple or hesitate a moment to use arms in defence of so valuable a blessing, is clearly my opinion."

This sentiment and others of the like strain, universally diffused, led to military training in many parts of the country. It was to furnish the only effectual answer to the purpose of oppression; and as the heart of John Marshall was from his birth riveted to the cause of freedom, he devoted himself from 1773, when he was in his eighteenth year, to acquire the elements of military knowledge in a volunteer corps, with a comparative disregard of the further pursuit of his civil education, and of the study of the law, which he had commenced.

The battle of Lexington, on the 19th of April, 1775, brought to a crisis the protracted efforts of the colonies, to obtain the blessings of political liberty by appeals to justice, and to the principles of the British constitution.

At this date, Mr. Marshall resided in the paternal mansion at Oak Hill, and his first appearance after intelligence of the event, was as an officer of a militia company in Fauquier, which had been ordered to assemble about ten miles from his

residence. A kinsman and cotemporary, who was an eye witness of this scene, has thus described it to me.

“ It was in May, 1775. He was then a youth of nineteen. The muster field was some twenty miles distant from the Court House, and in a section of country peopled by tillers of the earth. Rumours of the occurrences near Boston, had circulated with the effect of alarm and agitation, but without the means of ascertaining the truth, for not a newspaper was printed nearer than Williamsburg, nor was one taken within the bounds of the militia company, though large. The Captain had called the company together, and was expected to attend, but did not. John Marshall had been appointed Lieutenant to it. His father had formerly commanded it. Soon after Lieutenant Marshall’s appearance on the ground, those who knew him clustered about him to greet him, others from curiosity and to hear the news.

“ He proceeded to inform the company that the Captain would not be there, and that he had been appointed Lieutenant instead of a better:—that he had come to meet them as fellow soldiers, who were likely to be called on to defend their country, and their own rights and liberties invaded by the British:—that there had been a battle at Lexington in Massachusetts, between the British and Americans, in which the Americans were victorious, but that more fighting was expected:—that soldiers were called for, and that it was time to brighten their fire arms, and learn to use them in the field;—and that if they would fall into a single line, he would show them the new manual exercise, for which purpose he had brought his gun,—bringing it up to his shoulder.—The sergeants put the men in line, and their fugleman presented himself in front to the right. His figure, says his venerable kinsman, I have now before me. He was about six feet high, straight and rather slender, of dark com-

plexion—showing little if any rosy red, yet good health, the outline of the face nearly a circle, and within that, eyes dark to blackness, strong and penetrating, beaming with intelligence and good nature; an upright forehead, rather low, was terminated in a horizontal line by a mass of raven-black hair of unusual thickness and strength—the features of the face were in harmony with this outline, and the temples fully developed.—The result of this combination was interesting and very agreeable. The body and limbs indicated agility, rather than strength, in which, however, he was by no means deficient. He wore a purple or pale-blue hunting-shirt, and trousers of the same material fringed with white. A round black hat, mounted with the bucks-tail for a cockade, crowned the figure and the man.

“He went through the manual exercise by word and motion deliberately pronounced and performed, in the presence of the company, before he required the men to imitate him; and then proceeded to exercise them, with the most perfect temper. Never did man possess a temper more happy, or if otherwise, more subdued or better disciplined.

“After a few lessons, the company were dismissed, and informed that if they wished to hear more about the war, and would form a circle around him, he would tell them what he understood about it. The circle was formed, and he addressed the company for something like an hour. I remember, for I was near him, that he spoke at the close of his speech of the Minute Battalion, about to be raised, and said he was going into it, and expected to be joined by many of his hearers. He then challenged an acquaintance to a game of quoits, and they closed the day with foot races, and other athletic exercises, at which there was no betting. He had walked ten miles to the muster field, and returned the

same distance on foot to his father's house at Oak Hill, where he arrived a little after sunset."

This is a portrait, my fellow citizens, to which in simplicity, gaiety of heart, and manliness of spirit, in every thing but the symbols of the youthful soldier, and one or two of those lineaments, which the hand of time, however gentle, changes and perhaps improves, he never lost his resemblance. All who knew him well, will recognize its truth to nature.

In the summer of 1775, he was appointed first Lieutenant of a company in that Minute Battalion, of which he had spoken,—was ordered in the autumn of that year to the defence of the inhabitants adjacent to Norfolk, then menaced by a predatory force under Lord Dunmore, the Royal Governor of the colony; and on the 9th of December he had a part in the gallant and successful action at the Great Bridge, where Lord Dunmore attempted to arrest their further progress to Norfolk, but was compelled by defeat to take refuge in his vessels, and to leave to the inhabitants the succour which had been sent them. Thus, at an age when the law regarded him as still in a state of pupillage to be defended by others, he was facing the fire of the enemy in the defence of his country.

In July, 1776, he was commissioned a Lieutenant in the 11th Virginia Regiment in the continental service, with which he marched to the northward, where in May, 1777, he was appointed a Captain; and from this time till February, 1781, with the exception of a part of the year 1779–80, he was constantly at the post of danger, and had before the age of twenty-six, given one third of his life either to pre-

paration for duty, or to the full and effective services of a patriot soldier.

The principal events of his military life, have a peculiar interest for you, my fellow citizens, since the protection or the rescue of this city from the grasp of the enemy, was connected with most of them. His regiment belonged to the brigade of General Woodford, which formed part of the American right at the battle of Brandywine, in front of which was placed the third regiment, commanded by his gallant father.

On the fourth of October following, he was in the battle of Germantown, and in that part of the American army, which after attacking the light infantry posted in front of the British right wing, and driving it from its ground, was detained, while pursuing the flying enemy, by the fire of the 40th British regiment in Chew's house.

He was one of that body of men, never surpassed in the history of the world, who, unpaid, unclothed, unfed, tracked the snows of Valley Forge with the blood of their footsteps in the rigorous winter of 1778, and yet turned not their faces from their country in resentment, nor from their enemies in fear.

He was again in battle at Monmouth on the 28th June, 1778, upon the retreat of the British army from this city to New York; and thus in the course of less than a year, he was three times in battle under the immortal father of his country, and twice, in the fields of Brandywine and Monmouth, with the heroic La Fayette. *Washington—La Fayette—Marshall*—what names now more sacred to the lovers of constitutional freedom throughout this land! *Brandy*

dywine—Germantown—Monmouth—What battles could have equalled the disaster of these, if their rolls had returned such names among the dead !

On the night of the 15th June, 1779, he was in the covering party at the assault of Stony Point; and was subsequently an officer of the detachment ordered by Lord Sterling to cover the retreat of Major Lee, after his brilliant surprise, and capture of the British garrison at Powles' Hook, on the night of the 18th August. He continued on the Hudson until the close of that year, when not being in that part of the Virginia line which was ordered to South Carolina, and the enlistment of the rest of the Virginia troops having expired, he returned to his native state, and until October, 1780, prosecuted the study, and took a license for the practice of the law.

In October, 1780, when the man who was the only stain upon the fidelity of the American army, invaded the state of Virginia with a British force, Captain Marshall again joined the army under the command of Baron Steuben, and on the 10th of January, 1781, was with it near Hoods, when the British troops, on their retiring to Portsmouth, sustained, in an ambuscade by the Americans, the only loss which on their part attended that incursion. Before the renewed invasion of Virginia in the spring of 1781, there being more officers than the state of the Virginia line required, he resigned his commission, and in the succeeding autumn commenced the business of his profession.

And now, my fellow citizens, if in the heat and conflict of political parties, it sometimes happens, as happen it does, that the principles and motives of the best among us, are calumniated by imputed disaffection to freedom, to republi-

canism, and to the good of the people, what more triumphant refutation of the slander, if it were uttered against John Marshall, than to hold up this brief sketch of the first twenty-five years of his life! A man of the people, deriving his existence from a cultivator of the earth: a stranger during youth to all the indulgences which nourish a sense of superiority to others, or deaden a sympathy with the humble:—imbibing his knowledge, his tastes, his morality, his estimate of mankind, from a brave and virtuous yeoman:—and at the age of nineteen, seizing a sword from the armory of his country, and without the thirst of military glory or the love of command, carrying it for six years unsheathed, in the cause of equal rights!—Such a man at the age of twenty-five, must have turned out his father's blood from his veins, and have dug up from the native soil of his heart, every seed and plant of his youth, or he could have no choice but to live and to die a republican.

But a short time elapsed after Mr. Marshall's appearance at the bar of Virginia, before he attracted the notice of the public. His placidity, moderation, and calmness, irresistibly won the esteem of men, and invited them to intercourse with him;—his benevolent heart, and his serene and at times joyous temper, made him the cherished companion of his friends;—his candour and integrity attracted the confidence of the bar;—and that extraordinary comprehension and grasp of mind, by which difficulties were seized and overcome without effort or parade, commanded the attention and respect of the Courts of Justice. This is the traditional account of the first professional years of John Marshall. He accordingly rose rapidly to distinction, and to a distinction which nobody envied, because he seemed neither to wish it, nor to be conscious of it himself.

He was chosen a representative to the Legislature, and then a member of the Executive Council, in the course of the year 1782; but after his marriage in January, 1783, with Mary Willis Ambler, a daughter of Jacqueline Ambler, of York, in Virginia, he was desirous of leaving public life, that he might devote himself more closely to his profession, and to that domestic felicity which was promised by his union with a lady who for nearly fifty years enjoyed his unceasing affection and tenderness, and whom he describes in his will as a Sainted Spirit that had fled from the sufferings of life. He accordingly, in the year 1784, resigned his seat in the Executive Council; but although he was an inhabitant of Richmond, his friends in Fauquier, who had known and loved him from his birth, and took a most natural pride in connecting his rising name with their county, spontaneously elected him to the Legislature; and in the year 1787, he was chosen a representative to the same body for the city of Richmond.

A day had now approached, when questions of momentous national concern were to display more extensively the powers of this eminent man, and to give to the whole American people an interest in his services and fame.

Whoever speaks of the confederation under which these states achieved their separation from Great Britain, may safely do it in the language, and with the feelings of the Historian of Washington. "Like many other human institutions," he says, "it was productive neither in war nor in peace, of all the benefits which its sanguine advocates had expected. Had peace been made before any agreement for a permanent union was formed, it is far from being improbable, that the different parts might have fallen asunder, and a dismemberment have taken place. If the confederation

really preserved the idea of union, until the good sense of the nation adopted a more efficient system, this service alone entitles that instrument to the respectful recollection of the American people, and its framers to their gratitude.”* With this just testimonial to a merit sufficient of itself to consecrate it in the affections of the country, it must at the same time be conceded, that the confederation was no more than the limited representative of other governments, and not a government itself. It was a league of Sovereigns, but not a Sovereign, nor had its mandates the sanctions, nor consequently the efficacy, of a supreme law. With power to contract debts, and to pledge the public faith for their payment, it had no power to levy taxes, or to impose duties for the redemption of the pledge. It was competent to declare war, but not to raise armies to carry it on. It was authorized to receive Ambassadors and to make treaties, but not to regulate commerce, their most frequent and most salutary object. It stipulated for the free and equal trade and intercourse of the citizens of all the states, but was without judicial authority to decide upon the violation of the compact, or to declare the nullity of the violating law. It was in fine the organ of communication between the states, and with foreign powers, and was entrusted in certain cases to declare their respective relations, and to assess the proportions in which the members of the confederacy were to discharge their common duty, but it could effectuate nothing, until the separate consent and act of the states had supplied it with the means. Every case of non-compliance with the requisitions of Congress, and they were frequent and fearful, was consequently either a case of rupture and dissolution of the union, or of general paralysis. When the excitement of war had subsided, and a diversity of local interests had

* 1 Marsh. Life of Washington, 429.

produced the inevitable birth of opposing wishes and opinions, "a government depending upon thirteen distinct sovereignties for the preservation of the public faith, could not be rescued from ignominy and contempt, but by finding those sovereignties administered by men exempt from the passions incident to human nature."*

The years of peace which immediately ensued this glorious war, attested but too faithfully the entire inefficiency of this system for the maintenance of the character as well as of the interests of the American people. The debts of the nation were unpaid, even to "that illustrious and patriotic band of fellow citizens, whose blood and whose bravery had defended the liberties of their country."† The men whom we now seek for in every nook and corner of this extended land, to clothe them with the mantle of unsparing bounty, in gratitude for the smallest contribution of military service, are the survivors of those, who, having borne the burden of the whole war, were then suffered to perish in their rags for want of justice. Some of the stipulations of the treaty of peace with Great Britain, were confessedly violated by us, through the inability of Congress to enforce their performance by the states; and the nation from whom we had wrung our freedom, in a struggle not more illustrated by courage, than by that virtue which justified the appeal "to the Supreme Judge of the world for the rectitude of our intentions," could cite our defaults in peace, as the cause and excuse of her own. Public credit was annihilated:—Private engagements were disregarded:—State laws, instead of correcting the evil, in many instances increased it, by relaxing the administration of Justice; and the fruit of the

* 2 Marsh. Life of Washington, 75.

† Address of Congress to the States.

whole was the prodigious birth of parties, in whose conflict the common mother that bore them was threatened with dishonour and death.

These parties, in both of which there were many who looked with agony upon the state of the country, and at the crisis, which the unremedied mischiefs of the time must soon have brought on, were in all that regards our national union, discriminated by a broad and never to be forgotten distinction. On the one side, regarding the people as one, by their common sufferings, triumphs and interests, and dreading the catastrophe which they feared was at hand, they laboured to unite them in an indissoluble union, under one Federal head, having supreme power to regulate and govern the general concerns of the whole. On the other, regarding the states with partial affection, and jealous of every measure which tended to deprive them of any portion of the ultimate control, they magnified the danger, and decried the uses, and resisted the grant, of efficient powers, even to the confederation.

It is known on which side of this great question was the immortal father of his country. "I do not conceive," he said in the year 1786, "that we can exist long as a nation, without lodging somewhere a power which will pervade the whole union in as energetic a manner, as the authority of the state governments extends over the several states." Being called upon to use his personal influence, to bring to order a body of insurgents, whom the disordered state of the times permitted to grow into flagrant rebellion against the laws, he replied, "I know not where that influence is to be found, nor, if attainable, that it would be a proper remedy for these disorders. *Influence* is not *Government*. Let us have a government by which our lives,

liberties and properties, will be secured, or let us know the worst at once." On the same side, then and ever after, was JOHN MARSHALL; and when the extremity of public distress had wrung from twelve of the states their consent to a convention for the revision of the Federal System, and that body had submitted for the approbation of the people of the several states the present Constitution, he was a delegate to the convention of Virginia, which met on the second of June, 1788, to take it into consideration.

Virginia was divided with remarkable equality in regard to this instrument, for which there is now among us a profession of universal admiration; and she sent the flower of her people to the convention at which it was to be considered. Intelligence, talents, patriotism, and undoubted integrity of purpose, did not distinguish the parties in that body from each other; but they were irreconcilably opposed in opinion, and respectively assailed and defended the fundamental principles of the constitution with the ardour of equal conviction. The fire of PATRICK HENRY kindled in many of his hearers the most vivid apprehensions for the fate of the states, and of freedom itself, under the influence of a constitution, in the first words of which, "We the people," he saw the portent of consolidation, and in the title and office of President, "the likeness of a kingly crown." He alarmed them by the declaration, that by the power of taxation, by that of raising an army, and by their control over the militia, Congress would have the sword in one hand and the purse in the other, "and that unless a miracle in human affairs interposed," the nation could not retain its liberty: that the treaty making power would place the territory and commerce of the states in the hands of the President and two thirds of a quorum of the Senate; and that by its power to make all laws which should be necessary and proper to

carry its express powers into effect, "the government would operate like an ambuscade, and would destroy the state governments, and swallow the liberties of the people, without giving them previous notice." Other delegates of great name and influence, the Masons and the Graysons, men at that time and afterwards most dear to Virginia, assisted to rivet these fears upon the public mind, by every variety of argument drawn from almost every provision in the Constitution, those especially to which there must be immediate resort, in the very first steps of its administration.

Of the delegates who resisted these assaults, there were two whom subsequent events have distinguished from the rest by their long continued and elevated career. JAMES MADISON, who had been a distinguished member of the convention which formed the constitution, and had afterwards devoted his consummate powers with HAMILTON and JAY, to the explanation and defence of the whole instrument,—this now most venerable and venerated man, the beautiful evening of whose illustrious life, is, to the delight of a grateful people, still unspent,—gave to it again the full vigor of his philosophical mind, and the copious resources of his mature and disciplined wisdom; and by his side stood the man we are assembled to honour, who turning from what was incidental or subordinate to the more important topics of debate, and shedding upon them the light of an intellect, in whose rays nothing was obscure, dispelled the shadows which had been thrown around them, and in sustaining the Constitution, unconsciously prepared for his own glory, the imperishable connection which his name now has with its principles. Fortunately for him, as for us all, the convention of Virginia adopted the Constitution; but the small majority of ten by which it was carried, and this brief notice of the objections to it, may show that the seeds of

party division were sown, before the formation of the present union, and that if the spirit of the confederation was not likely to misinterpret the administration of the Constitution, it was as little likely to regard it with favour.

The sentiments of Mr. Marshall upon the best general structure of government, declared in this memorable convention, were those in which he afterwards lived and died. He was the friend of a government of sufficient strength to protect those rights in whose behalf government is instituted; but he was also, and therefore, the friend of the people, and of the principle of representation, by which rulers are kept in harmony with the people; and he gave his cordial preference to the scheme of regulated liberty, proposed in the Constitution, over every other form of government upon earth. In his first reply to Mr. Henry, he said, "I conceive that the object of the discussion now before us is whether democracy or despotism be most eligible. Those who framed the system submitted to our investigation, and those who now support it, intend the establishment and security of the former. The supporters of the Constitution claim the title of being firm friends of liberty and the rights of mankind. They consider it the best means of protecting liberty. We, sir, idolize democracy. Those who oppose it, have bestowed eulogiums on monarchy. We prefer this system to any monarchy, because we are convinced that it has a greater tendency to secure our liberty, and promote our happiness. We admire it, because we think it a well regulated democracy." "The honourable gentleman said, that a government should depend upon the affections of the people. It must be so. It is the best support it can have." "We are threatened with the loss of our liberties by the possible abuse of power, notwithstanding the maxim that those who give

“may take away. It is the people that give power and can take it back. What shall restrain them? They are the masters who gave it, and of whom their servants hold it.” The worthy member has concluded his observations by many eulogiums on the British Constitution. It matters not to us, whether it be a wise one or not. I think that, for America at least, the government on your table, is very much superior to it. I ask you, if your house of representatives would be better than this, if the hundredth part of the people were to elect a majority of them? If your Senators were for life, would they be more agreeable to you? If your President were not accountable to you for his conduct,—if it were a constitutional maxim that he could do no wrong,—would you be safer than you are now? If you can answer *yes* to these questions, then adopt the British constitution. If not, then, good as that government may be, this is better.”

It was the admirable temper in which these remarks were made, and the spirit of sincerity and personal conviction which breathed in them, that drew from Patrick Henry, his short but comprehensive eulogium. “I have the highest respect and veneration for the honourable gentleman. I have experienced his candour upon all occasions.”

We are now, fellow citizens, at the distance of nearly half a century from the first movements of the government established by the Constitution thus adopted, and it is not possible to give an intelligible narrative of the life of John Marshall, without a glance at them during the administration of the first President. The principal actors in them have passed away. Their conflicts of opinion,—their struggles for personal triumph, or for public favour,—have ceased to divide or to excite us, while the memory of their talents

and of their devotion to the public welfare, is perpetually coming up to us with fresh and renewed fragrance, as our senses take in the scene of universal happiness which has crowned their labours. In referring to that day, it is our duty and delight, not only to remember this, but especially that we are speaking of one, whose heart was a fountain of good will to all, and who in the sharpest encounters of party, was a stranger to every feeling that embitters or degrades it. No man of truth or candour ever imputed to him a motive that was false to his country. His venerable form would almost rise to the rebuke of one, who should endeavour to heighten his praise by imputing such a motive to those who were his political opponents.

among 15

← The friends of the Constitution, with whom the name of John Marshall will ever stand the first and most illustrious, were classed before and after its adoption, under the title of federalists, from their preference and support of the federal union, which it was designed to create. During the administrations which ensued, the apprehension of its alleged tendency to overthrow the states, and to destroy American liberty, as it had not been entertained by them at any time, did not induce them to adopt a jealous construction of its powers. ✓ They acted upon the principle, that it was their duty to give this instrument a fair interpretation, and fairly to exercise its powers in furtherance of its declared design, "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." As the sovereign people of the states had substituted the Constitution for the confederation, they believed that it consisted as little with their engagement of fidelity, as with the general welfare, to make it a confederation in effect, either by the rules by which it was ex-

pounded, or by the spirit in which it was administered. They regarded the states as strong by the ten thousand bonds of property and local association, and by the great basis of internal power which had been reserved to them by the people. The union they considered as destined to contempt and speedy extinction, unless the powers given to it should be used in the spirit of the gift, to make it in its own sphere, what the states were in theirs. It was a time, however, when to practise upon these principles, now almost universally professed, was to encounter the fears and honest prejudices of a large portion of the people, to a greater degree than we may at present be aware of. The people had been reared at the bosom of their respective states, with little experience of any but domestic authority, except that which was really foreign, and at the same time hostile; and they were not unsusceptible of alarm from preparations for a government which in some aspects appeared to be external, though it was truly and essentially an emanation from themselves. The system was untried. What it certainly would be, was not known. What it might prove to be, was sincerely feared. The exercise of power under political constitutions of very different character, being in many instances discriminated in degree, rather than in kind, its application in the mildest form becoming despotic if pressed to an extreme, it was not difficult in the obscure light of our just dawning government, to raise to an excited imagination a phantom of terrific threatenings, from the first acts of power, however mild and benign.

In this state of the public mind, the first office under the Constitution was held by Washington, to whom, if to any man upon earth, universal confidence was due, for the qualities material to the prosperous issue of the new government. Nevertheless, his incomparable moderation, his self-abandon-

ment upon all occasions, in furtherance of the public weal, his repeated rejection of power, trust and emolument, his known reluctance to accept the station, even at the unanimous call of his country, none of these could relieve his administration from the fears which the Constitution had engendered.

The funding of the debts of the union, and the assumption of the state debts contracted in the war—a proposed duty upon distilled spirits—the establishment of a national bank—an increase of the army to protect the western frontier from Indian aggression—and an enlargement of the duties on impost and tonnage, with a view to a permanent provision for the discharge of the public debt, instead of leaving it to annual appropriations, were the principal transactions which marked the first official term of the first President of the union; and we may ponder them as constituting an instructive chapter in the history of the human mind, when acts like these could before the year 1793, organize this nation into parties, who continued their struggle till the authors of this legislation ceased as a party to exist, and the fear of their prevailing policy ceased to exist with them.

It can excite no surprise in those who are familiar with that day, that in the intermediate period, between the proclamation of neutrality in 1793, and the ratification of the British treaty in 1795, an endeavour to provide an armament of six frigates for naval protection, had to contend with the same apprehension of federal power; and that it was necessary to palliate this first effort towards the foundation of our immortal navy, with a clause which suspended further proceedings, if peace should take place with the regency of Algiers.—It should allay the bitterness of parties that are,

and are to come, to cast their eyes back to the still visible distance of our first administrations, and to see how little of that which once divided the country, now remains to discriminate us.

No state in the union took an earlier or more decided lead upon the questions supposed to affect the power of the states, than Virginia. Her talents, her love of liberty, her love of fame,

————— the spur that the clear spirit doth raise,
(That last infirmity of noble mind,)

continued to make her voice earnest, clear, and determined, in asserting the dangers of the federal administration, as it had been, in opposing the Constitution. At the first meeting of the state legislature after it had been adopted, the political sentiments of that body were such as to send the opponents of the Constitution to the Senate of the United States, in exclusion of Mr. Madison; and they adopted by a majority of two to one, resolutions enjoining Congress to call a convention, for proposing amendments to it, to the effect, if successful, of throwing again open the whole subject of union.

Of this legislative body, Mr. Marshall was a member, representing the city of Richmond, as he continued to do until the spring of 1791.

He had attained a high professional reputation, offering every thing that great learning, extraordinary vigour of mind, and the purest integrity, can place within the reach of an eminent lawyer. He was a favourite with the people of Virginia; and in a professional career, undisturbed by poli-

tical connexion, there was nothing to obstruct his progress to universal regard and preference. But although no man, from the gentleness of his nature and the perfect balance of his mind and affections, could be freer from party excitement than he was, the success of the new government was near to his heart. He had laboured strenuously to endue it with the powers it possessed. He had studied its principles, with as little disturbance from passion or prejudice as our nature permits, and thoroughly approved them. He was moreover devotedly, and by hereditary regard, attached to the man, to whom the people had confided the exalted trust of first administering the Constitution, knew and appreciated his wisdom, his moderation, the equipoise of his passions, his exemption from the stain of selfish ambition, his fear of God, and his love of country. The united influence of these causes, together with the urgent instances of his friends, compelled him at the outset of the government to disregard personal inconvenience, in coming to its support; and accordingly for successive years, on the theatre of his native state, where the sincerest admiration of Washington, did not prevent, nor scarcely mitigate the freest strictures upon his administration, Mr. Marshall gave the full powers of his intellect to the explanation and defence of its measures.

He was perhaps the fittest of his cotemporaries for the performance of this office. It was impossible to charge his life with a reproach. If a measure was condemned for its tendency to produce corruption, from whom could its defence come with more effect, than from one who was known to be incorruptible? If it was assailed for perniciously increasing the lustre or the influence of office, who could confront the charge with more grace, than one whose simplicity rejected all the artifices by which weakness is disguised, or strength made more imposing to the prejudices of men? If it was

denounced as a dangerous excess of power, whose denial could be more accredited, than that of a lover and defender of freedom from his youth, and one who in his intercourse with the world, disclaimed the distinction and authority even of his own talents? And above all, if the objection challenged the act as an usurpation upon the Constitution, who was there then, and who has there been since, that could surpass, or in all respects equal him, in touching the springs by which the inmost sense of the instrument is unlocked, and displayed to view? The application of his powers in this cause, was an admirable exercise for himself, enlarging and fortifying his mind for the great duties he was destined to perform. It preserved the warmth of his heart, and the genial flow of his affections towards his country, and its institutions, and if success and conviction did not follow his exertions, they did not inflame opposition, nor provoke resentments. His manner of debating then and ever after in representative bodies, was as grave as truth and reason could make it. He trusted to these alone for effect. He resorted to none of those arts of oratory which so often disturb their influence; and if he failed to win over his opponents, he did not alienate their respect and good will.

He declined a re-election in 1792, and from this time until 1795, continued in the practice of his profession.

In the last of these years the country was agitated to a degree transcending all former experience, by the ratification of the treaty with Great Britain. Scarcely any public measure which in the sequel has done so much good and so little injury to the nation, has been in the outset the occasion of more general and intense dissatisfaction. While the Constitution was in the hands of the people for rejection or adoption, the power by treaty, to regulate our relations with

the world, and to affect the commerce of the country with the obligatory force of a supreme law, without the intervention of Congress, was an undisputed construction of its language, and was regarded in some of the conventions, as one of its most dangerous provisions. In the excitement occasioned by the treaty with Great Britain, this construction was rejected. The authority of Congress to regulate commerce, was inferred to be exclusive from the general grant of the power to that department, or to imply a final control over a treaty having this aspect; and even the pledge of the public faith for the execution of a treaty, was asserted to be incomplete, while Congress withheld the appropriations which it made necessary. We may perceive in our existing relations with a foreign government, how remarkably the opinions of the people upon this point, have in the course of forty years converged to unanimity! The question was then new and of infinite moment. It was the first great occasion for discussing the limits of the treaty making power, for it was the first treaty upon which a large portion of the people, with whom the representative branch was likely to sympathize, had differed from the executive; and it was a crisis moreover in which war with England, or discord equivalent to war with France, was the apparent alternative of a decision either way.

It was at this time that Mr. Marshall again held a seat in the Legislature of Virginia, to which the sagacity of his friends had elected him against his consent. The Senators of Virginia had refused to concur in the ratification of the treaty. An opinion of great influence was afterwards expressed in that state, impeaching the treaty as one in which "the rights, the interest, the honour and the faith of the nation were grossly sacrificed." It was here of course that the constitutional defect as well as every other objec-

tion that could encourage the House of Representatives to defeat the treaty by refusing the appropriations, was urged with all the ardour of excited feelings, and with the energy of sincere belief. But upon a question of constitutional law, no feelings and no conviction that were not in harmony with the truth, could resist the powers of John Marshall. The memory of the surviving witnesses of his memorable effort upon that occasion, is believed to be the only record of it which exists. It is remembered as an admirable display of the finest powers of reasoning, accompanied with an exhibition of the fullest knowledge and comprehension of the history and scope of the Constitution, and of the public interests affected by the treaty; and its effect will forever be seen in the resolution which the house adopted. It did not touch the constitutional objection in any of its forms, nor directly question the expediency of the treaty; but it expressed the highest sense of the integrity, patriotism and wisdom of the President of the United States, and declared that in approving the votes of the senators of that state relative to the treaty, the assembly did in no wise mean to censure the motives which influenced him to the ratification.

This period of the life of Chief Justice Marshall, taken in connection with that which preceded, and contemplated in reference to what finally proved to be his great duty, and the crown of his public services, cannot be regarded without emotion, by any one who acknowledges a providence in the affairs of men.

The day was to come, and was not distant, when laws enacted by the representatives of a free and sovereign people, were to be submitted to a comparison with the Constitution of the nation, and to stand or fall by the decrees of a court destitute of the smallest portion of political power, and

having no independent authority but that of reason. The passions of the people, the interests of the states, and the power of both, were to be controlled and overruled in this name; or if it should be despised and rejected, the only bond of the union that would remain, was to be that which alone remains to nations after reason and law have departed from the earth.

The mind of man cannot conceive of a finer contrivance than the judicial power of the union to give regularity and harmony to a system, the parts of which acknowledge independent laws, and gravitate as it were towards different suns, while the whole move in one common orbit, and are bound to obey a central attraction for the maintenance of internal order, and of their relations to the external world. But the essence of this attraction is reason rather than force, and the great fountain which supplies it, is in this supreme and central court; and we might tremble to ask, where would the greater disturbances of the system look for their corrective, if the supply of this celestial influence should fail, if her bosom should cease to be the seat of the law, and her voice the harmony of the union.

For the first of the offices in this august court, what virtues then, what intellectual powers, what training could have more the cast of apparent destination, than those of this eminent man. To the eye of the world, his connection with the war, with the confederacy, with the adoption of the Constitution, with the conflicts of opinion it excited, and the contests which its first operations produced, may have appeared casual. His consent to serve in legislative assemblies was often reluctant and sometimes withheld. Office, power and public honours, he never sought. They sought him, and never found him prepared to welcome them, except as

a sense of duty commanded. The last thing to which his eye was directed, was probably the office which he finally held. But we can now look back, and see with certainty, that it was this very combination of patriot soldier, lawyer, and statesman, and strenuous defender and expounder of the Constitution, united with his republican simplicity of manners, the amenity of his temper, and his total exemption from that stain by which the angels fell, that was filling the measure of his accomplishments for it, and preparing the whole country to acknowledge that no one could fill it so well.

After the argument upon the British treaty, which made him universally known, Mr. Marshall was regarded as belonging to the nation. The President offered to his acceptance the office of Attorney General of the United States, which he felt himself at liberty to decline. Upon the recall of Mr. Monroe from France in the year 1796, he was invited to take the appointment of minister to that nation, but he again declined. He continued in the Legislature of Virginia, and prosecuted his profession with assiduity and still increasing reputation. It was in this year, and at the bar of the Supreme Court of the United States, in this city, that he justified his professional fame by his argument in the great cause of the Virginia debts. In the following year when under peculiar circumstances it was deemed proper to make a last effort to avert hostilities with France by a special mission, his sense of patriotic duty overcame his reluctance, and he accepted the appointment offered to him, in conjunction with General Pinckney and Mr. Gerry, by Mr. Adams then President of the United States.

No man in the nation was fitter for the office by firmness, by moderation, by true American spirit, extensive know-

ledge of political events, and thorough competency to justify the course of Washington's administration towards France. It was at the same time a post of great difficulty and responsibility. From the first outbreaking of that revolution which he has described as "the admiration, the wonder, and the terror of the civilized world," the gratitude of this people for aid in the revolutionary war, and their sympathy with the cause of freedom, gave them the strongest interest in the establishment of a free government in France. They felt it universally, and they expressed it in every form that grateful hearts could suggest. The affection was deep, sincere, and enthusiastic. The first excesses of the revolution did not arrest, nor to any great degree abate, the force of this generous current. They were attributed to the strength of the bondage by which the people of France had been chained to the earth, and which nothing but convulsions could shatter to pieces. But as from day to day they became more frightful in that career which was to cover France with blood and horror, many of her sincerest friends, more than doubted whether these were the lineaments of true liberty, and whether it was the duty of gratitude to admire and to praise them. Upon this point, and possibly because we were so upon others, we became a divided people; and when the declaration of war by France against Great Britain, made it her interest as it was her undisguised purpose to draw us into an alliance with her, it required all the firmness and personal influence of that immortal man, who was then at the head of our government, to hold our nation to the safe and middle path of neutrality. Our treaty with Great Britain, increased the division among ourselves, aggravated the complaints of France, and at length led to a scene of unparalleled outrage upon our property, our peace, and our independence. Pursuing that policy which from the outset marked her course towards those who either op-

posed or stood aloof from her, France openly attempted to separate this people from those whom they had selected to administer their government. In November, 1796, the French minister to this country, in announcing to the Secretary of State by order of the directory, the suspension of his functions, concluded his letter by an inflammatory apostrophe to the American people, calling upon them to remember that this government had made a treaty of amity with the tyrant of the seas, who had declared a war of death to the French nation for having cemented with its blood the independence of the United States. "Let your government return to itself," was its concluding sentence, "and you will find in Frenchmen faithful friends and generous allies."

In the same spirit the Directory refused to receive General Pinckney, the minister appointed to succeed Mr. Monroe, and compelled him to leave the territories of the Republic; and its President, in his formal address at the audience of leave given to Mr. Monroe, declared that France would not "degrade herself by calculating the consequences of the condescendence of the American government to the suggestions of her former tyrants;" but the American minister was requested to assure the "good American people, that like them France adored Liberty, that *they* would always have her esteem, and that *they* would find in the French people that republican generosity, which knows how to grant peace, as it does to cause its sovereignty to be respected."

What, my fellow citizens, would be the effect of an appeal in the same spirit to the American people, at the present hour? What would be the response at this day, to such an invasion of American independence? One universal cry of disdain and defiance from the farthest extremity of Maine to the Gulf of Mexico. In party divisions still continuing, and

never to cease, the inseparable attendant of all the free states that have ever existed, the mingled good and evil of the best governments that man has ever formed, we strive for the power to order and appoint our own house as we deem best; but the very struggle has bound us the more to our country, and would indignantly throw off from the contest the intrusion of aliens, as an imputation and stain upon our filial love.

It was at a special session of Congress, convened upon the receipt of the despatches of General Pinckney, that the President of the United States, on the 31st May, 1797, nominated that gentleman, together with Francis Dana, chief justice of the state of Massachusetts, and General John Marshall, to be Ministers to the French Republic. Mr. Gerry was subsequently nominated upon Mr. Dana's declining to accept the appointment. In the message to the Senate which made this nomination, the President stated, that in the then critical and singular circumstances, it was of great importance to engage the confidence of the great portions of the Union in the character of the persons employed, and the measures which ought to be adopted; and he had therefore thought it expedient to nominate persons of talents and integrity, long known and intrusted in the three great divisions of the Union; and in his message to the House of Representatives, with a spirit and fearlessness in the cause of his country, in which Mr. Adams was second to no man that ever lived, he said, "such attempts to separate the people from their government, to persuade them that they had different affections, principles and interests, from those of their fellow citizens, whom they had themselves chosen to manage their common concerns, and thus to produce divisions fatal to our peace, ought to be repelled with a decision which should convince France and the world,

that we were not a degraded people, humiliated under a colonial spirit of fear, and sense of inferiority, fitted to be the miserable instruments of foreign influence, and regardless of honour, character and interest." Immortal sentiments, worthy of a founder of the republic, and worthy to unite with the blood of her own citizens, in cementing her independence!

It was reserved for such a revolution as that of France, to add the page to history which records the course and termination of this celebrated mission. The ministers were surrounded in Paris by the apparatus of a revolutionary power, the terrors of which were only alleviated by comparison with some of its preceding forms. They were unaccredited, unrespected, unprotected, and were daily suffering in their persons both contumely and insult. They were assailed informally, but at the undoubted instigation of the minister of foreign affairs, with the flagitious demand of money for official use and distribution, as the conditional price of the liberty to negotiate for an adjustment of differences; and they were menaced, if they should refuse to pay the bribe, that party in their own country, would and should renounce them as corrupted by British influence to rupture the négociation.

Nothing however could shake the constant minds of the American ministers. No unworthy fear could make them abate one jot or tittle of their whole duty to their country. They silenced the panders to this infamous venality with the answer of "no, no, not a sixpence;" and though denied the privilege of negotiation, they gained the whole merit, and perhaps more than the whole benefit of it, by forcing upon the minister of foreign affairs, before they received their passports, a defence of their country, and a bill of

accusations against France, so full, so clear, so profound in its arguments, and withal so dignified and moderate in its tone, so truly and thoroughly American in its whole spirit, that it did not admit of refutation, nor of any limitation or qualification of praise.

The letters of the 17th January and 3d April, 1798, to Talleyrand the minister of foreign relations, will reward perusal at all times as admirable specimens of diplomacy. They have always been attributed to the pen of Mr. Marshall. They bear internal marks of it. We have since become familiar with his simple and masculine style,—his direct, connected, and demonstrative reasoning—the infrequency of his resort to illustrations, and the pertinency and truth of the few which he uses—the absence of all violent assertion—the impersonal form of his positions, and especially with the candour, as much the character of the man as of his writings, with which he allows to the opposing argument its fair strength, without attempting to elude it, or escape from it, by a subtlety. Every line that he has written bears the stamp of sincerity; and if his arguments fail to produce conviction, they never raise a doubt, nor the shadow of a doubt, that they proceed from it.

The impression made by the despatches of the American ministers was immediate and extensive. Mr. Marshall arrived in New York on the 17th of June, 1798. His entrance into this city on the 19th, had the eclat of a triumph. The military corps escorted him from Frankford to the city, where the citizens crowded his lodgings to testify their veneration and gratitude. Public addresses were made to him, breathing sentiments of the liveliest affection and respect. A public dinner was given to him by members of both houses of Congress “as an evidence of affection for

“his person, and of their grateful approbation of the patriotic firmness, with which he sustained the dignity of his country during his important mission;” and the country at large responded with one voice to the sentiment pronounced at this celebration, “Millions for defence, but not a cent for tribute.”

Mr. Marshall immediately after this returned to Virginia, and renewed his professional practice with a determination to be no further connected with political life; and nothing perhaps would have shaken his purpose, but an appeal which no determination could resist. We are indebted for the fact to a memoir of the Chief Justice which claims to have derived it from an authentic source.* General Washington, who had been appointed to the command of the armies raised by Congress for the expected hostilities with France, and who was afflicted by the spectacle of parties which still continued to cloud the country, invited Mr. Marshall to visit him at Mount Vernon. He there explained to him his views of the perilous crisis, pressed upon him with peculiar solemnity the duty which such men upon such occasions owe to their country in disregard of their private interests, and urged him to become a candidate for Congress. The more than sufficient motives for this request, were doubtless the commanding talents of Mr. Marshall, his familiarity with every branch of our foreign relations, the high reputation which he had acquired in the recent mission, and especially the rare union of gentleness and firmness for which he was universally known, and which made him as incapable of party excess, as he was of retreating before party opposition. But his reluctance was great, and he yielded it only to wishes, which upon a question of patriotic duty had the

* National Gallery of Portraits, Part III.

authority of law. He accordingly became a candidate, and was elected in the spring of 1799.

It was a rare fortune, and the highest possible praise, to be thought worthy of this solicitation by that extraordinary person, who was surpassed by no one in his judgment of men, or in his love of virtue or of country;—and it was a striking vicissitude, which, as the first act of Mr. Marshall in the succeeding Congress, imposed upon him the afflictive duty of announcing on the 18th of December the death of “the hero, the patriot, and the sage of America.” Those who were present on the occasion, can never forget the suppressed voice, and deep emotion, with which he introduced the subject on the following day; or the thrill which pervaded the house at the concluding resolution, which ascribed to Washington the transcendent praise and merit of being “first in war, first in peace, and first in the hearts of his countrymen.” The biography of Washington attributes to General Lee of Virginia the merit of this inimitable description, and modestly withholds the name of the member, whose introductory remarks were in all respects worthy of such a termination.

The house of representatives in which Mr. Marshall had a seat, was perhaps never exceeded, in the number of its accomplished debaters, or in the spirit with which they contended for the prize of public approbation. It was the last which convened in this city, and furnished a continual banquet to such as had the taste to relish the encounter of minds of the first order, stimulated to their highest efforts, and sustained by the mutual consciousness of patriotic motives. The course of this eminent man, as a member of it, was such as all impartial persons must review without a censure. His principles of government were fixed, his con-

fidence in the administration was great, his apprehensions of public mischief from a radical change of its measures was sincere, and he neither deviated from the path which these sentiments prescribed, nor faltered in it. But there was that about him which defended him from the assaults of party, and raised him above its suspicions. If he was a party man, he was so by position, and not from temper, or partial views. The homage which is paid to sincerity, even by those who do not practise it, was uniformly accorded to him; and the self-balanced mind which appeared in all he said and did, was an admitted proof that he drew from his own convictions, even that which went to sustain the efforts and to augment the resources of party.

In a certain description of cases, those of which the law or the Constitution formed the main part, he was confessedly the first man in the house. When he discussed them, he exhausted them; nothing more remained to be said, and the impression of his argument effaced that of every one else. Of this class, was the resolution of Mr. Livingston, impeaching an order of the executive, under a clause of the treaty with Great Britain, to surrender the person of Jonathan Robbins upon a charge of murder committed on board a British frigate. It was a question involving many of the greatest subjects that can be presented for debate, the construction of the treaty, the principles of the law of nations, the constitutional powers of the executive, and those also of the judicial department. Upon such topics, however dark to others, his mind could by its own clear light

— sit in the centre, and enjoy bright day.

The speech which he delivered upon this question is believed to be the only one that he ever revised, and it was worthy of the care. It has all the merits, and nearly all the

weight of a judicial sentence. It is throughout inspired by the purest reason, and the most copious and accurate learning. It separates the executive from the judicial power by a line so distinct, and a discrimination so wise, that all can perceive and approve it. It demonstrated that the surrender was an act of political power which belonged to the executive; and by excluding all such power from the grant of the Constitution to the judiciary, it prepared a pillow of repose for that department, where the success of the opposite argument would have planted thorns.

It has been said that his course in Congress was governed by his own convictions of right. No act of Congress during that administration was more thoroughly associated with party, than one of the previous session, commonly known, from its second section, by the name of the *Sedition Law*. He had not voted for it. He was not in Congress at the time of its enactment; but he voted for the repeal of the obnoxious section. Upon the introduction of a resolution to that effect, the journal of the house records his vote in the affirmative, while the names of all those with whom he generally concurred, are to be found on the other side.

There were measures of a different description which he promoted with the fondest zeal, and in conformity with the nearly universal wishes of the country. His personal veneration for Washington was the fruit of long observation and intercourse. It heightened his sense of the immeasurable debt, which in common with all, he believed was due to the father of his country; and not satisfied with that cheap discharge of it, which is found in the cold apothegm, "that the best monument of a patriot and hero, is in the bosoms of his countrymen," he deemed it the sacred duty of Congress to erect one, which should represent to the senses the

kindred image of the heart, and point the world and posterity, to all that was mortal of the founder of the republic. He submitted the resolution which invited the people to an universal commemoration of their grief for his death, on the anniversary of Washington's birth. He submitted that also which asked and obtained for the nation the precious deposit of his remains; and he reported the bill which passed the house of representatives for erecting a Mausoleum in the city of Washington: but the Senate postponed it to the next session, and he had then ceased to be a representative in Congress.

His connection with the house of representatives was terminated by his appointment at the close of the session, as secretary of war. He was soon after appointed secretary of state, and continued in this office the remainder of the year.

Although he held the latter office but a few months, the department contains the proof of his great abilities and patriotic spirit. It was his duty to correspond with the American Minister in England, upon the interrupted execution of the 6th article of the British treaty, in regard to compensation to British creditors, and upon the questions of contraband, blockade, and impressment, which threatened to destroy the peace of the two countries; and it is impossible to imagine a finer spirit, more fearless, more dignified, more conciliatory, or more true to his country, than animates his instructions to Mr. King. Our relations with England were now supposed to be in danger from a pending negotiation with France, and thus in some respects the language which he held to France in 1798, became necessary towards England. It was adopted without hesitation. "The United States," he said, "do not hold themselves in any degree

“responsible to France or to Great Britain for their negotiations with the one or the other of those powers, but they are ready to make amicable and reasonable explanations with either. The aggressions sometimes of one and sometimes of another belligerent power, have forced us to contemplate and prepare for war as a probable event. We have repelled, and we will continue to repel, injuries not doubtful in their nature, and hostilities not to be misunderstood. But this is a situation of necessity, not of choice. It is one in which we are placed not by our own acts, but by the acts of others, and which we change as soon as the conduct of others will permit us to change it.”— This is the spirit, this is the temper, that gives dignity and security to peace, and carries into war the hearts of an united people! His despatch of the 20th September, 1800, is a noble specimen of the first order of state papers, and shows the most finished adaptation of parts for the station of an American Secretary of State.

I have now, my fellow citizens, defectively traced the life of this eminent man to the age of forty-five; and you have seen him from his youth upward, engaged in various stations and offices, tending successively to corroborate his health, to expand his affections, to develop his mind, to enrich it with the stores of legal science, to familiarize him with public affairs, and with the principles of the Constitution, and before little more than half his life had run out, producing from the materials supplied by a most bountiful nature, a consummate work, pre-eminently fitted for the judicial department of the Federal Government. To the first office of this department he was appointed on the 31st of January, 1801.

At the date of this appointment, the Constitution had been

more frequently discussed in deliberative assemblies, than in the Supreme Court of the United States. Circumstances had not yet called for the intervention of that court upon questions opening the whole scheme of the Constitution, and thereby determining the rules for its interpretation; nor had any thing of previous occurrence established the meaning of some of the most important provisions which restrain the powers of the states. The Constitution is undoubtedly clear in most of its clauses. In all its parts it is perhaps as free from doubt or obscurity, as the general language of a Constitution permits. But a Constitution has necessarily some complication in its structure, and language itself is not a finished work. The Constitution of the United States has been truly called an enumeration of powers, and not a definition of them. It cannot therefore surprise us, nor does it take from its merit, that the language of the Constitution required interpretation. It is true of the time when this appointment was made, that in many parts of the greatest difficulty and delicacy, it had not then received a judicial interpretation.

It was obvious moreover at that time, that the rapidly augmenting transactions and legislation of the states, and their increasing numbers also, must within the compass of a few years, present cases of interference between the laws of the states and the Constitution, and bring up for discussion those embarrassing questions from which the earlier days of the Union had been exempt.

For the duty of leading the highest court in the country in the adjudication of questions of such magnitude, as well as of controversies determinable by the laws of all the states, and by the code of public law, including a range of inquiries exceeding that of any other judicial tribunal that is known

to us, was this illustrious person set apart; and when we now look back upon the thirty-four years of unimpaired vigour that he gave to the work, the extent to which the court has explained the Constitution, and sustained its supremacy, the principles of interpretation it has established for the decision of future controversy, and the confirmation it has given to all the blessings of life, by asserting and upholding the majesty of the law, we are lost in admiration of the man, and in gratitude to heaven for his beneficent life.

Rare indeed were the qualifications which he brought to the station, and which continued to be more and more developed the longer he held it.

He was endued by nature with a patience that was never surpassed;—patience to hear that which he knew already, that which he disapproved, that which questioned himself.—When he ceased to hear, it was not because his patience was exhausted, but because it ceased to be a virtue.

His carriage in the discharge of his judicial business, was faultless. Whether the argument was animated or dull, instructive or superficial, the regard of his expressive eye was an assurance that nothing that ought to affect the cause, was lost by inattention or indifference, and the courtesy of his general manner was only so far restrained on the Bench, as was necessary for the dignity of office, and for the suppression of familiarity.

His industry and powers of labour, when contemplated in connection with his social temper, show a facility that does not generally belong to parts of such strength. There remain behind him nearly thirty volumes of copiously reasoned decisions, greater in difficulty and labour, than probably

have been made in any other court during the life of a single judge! yet he participated in them all, and in those of greatest difficulty, his pen has most frequently drawn up the judgment; and in the midst of his judicial duties, he composed and published in the year 1804, a copious biography of Washington, surpassing in authenticity and minute accuracy, any public history with which we are acquainted. He found time also to revise it, and to publish a second edition, separating the History of the American Colonies from the Biography, and to prepare with his own pen an edition of the latter for the use of schools. Every part of it is marked with the scrupulous veracity of a judicial exposition; and it shows moreover, how deeply the writer was imbued with that spirit which will live after all the compositions of men shall be forgotten,—the spirit of charity, which could indite a history of the Revolution and of parties, in which he was a conspicuous actor, without discolouring his pages with the slightest infusion of gall. It could not be written with more candour an hundred years hence. It has not been challenged for the want of it, but in a single instance, and that has been refuted by himself with irresistible force of argument, as well as with unexhausted benignity of temper.

To qualities such as these, he joined an immoveable firmness befitting the office of presiding judge, in the highest tribunal of the country. It was not the result of excited feeling, and consequently never rose or fell with the emotions of the day. It was the constitution of his nature, and sprung from the composure of a mind undisturbed by doubt, and of a heart unsusceptible of fear. He thought not of the fleeting judgments and commentaries of men; and although he was not indifferent to their approbation, it was not the compass by which he was directed, nor the haven in which he looked for safety.

His learning was great, and his faculty of applying it of the very first order.

But it is not by these qualities that he is so much distinguished from the judges of his time. In learning and industry, in patience, firmness, and fidelity, he has had his equals. But there is no judge, living or dead, whose claims are disparaged by assigning the first place in the department of constitutional law to Chief Justice Marshall.

He looked through the Constitution with the glance of intuition. He had been with it at its creation, and had been in communion with it from that hour. As the fundamental law, instituted by the people, for the concerns of a rising nation, he revolted at the theory that seeks for possible meanings of its language, that will leave it the smallest possible power. Both his judgment and affections bound him to it as a government supreme in its delegated powers, and supreme in the authority to expound and enforce them, proceeding from the people, designed for their welfare, accountable to them, possessing their confidence, representing their sovereignty, and no more to be restrained in the spirit of jealousy, within less than the fair dimensions of its authority, than to be extended beyond them in the spirit of usurpation. These were his constitutional principles, and he interpreted the Constitution by their light. If it is said that they are the same which he held as a follower of Washington, a member of the legislature of Virginia, and of the Congress of the United States, when party divided the country, it is most true. He was sincere, constant and consistent from the beginning to the end of his life. If to others it appeared that his principles were meant for party, he knew that they were devoted to the whole people, and he received his earthly reward in their ultimate general

adoption, as the only security of the union, and of the public welfare.

To these principles he joined the most admirable powers of reasoning. When he came to his high office, hardly any interpretation of the Constitution could be assumed as true by force of authority. The Constitution is not a subject upon which mere authority is likely at any time to sustain a judicial construction with general consent. Reason is the great authority upon constitutional questions, and the faculty of reasoning is the only instrument by which it can be exercised. In him it was perfect, and its work was perfect,—in simplicity, perspicuity, connection and strength. It is commonly as direct as possible, rarely resorting to analogy, and never making it the basis or principal support of the argument. Of all descriptions of reasoning, this when sound is most authoritative, and such therefore are the judgments upon the Constitution to which it has been applied.

This is not the place for a particular reference to these judgments. During the time that he has been upon the bench, the court have explored almost every question in regard to the Constitution that can assume a judicial form. The obligation of contracts, and that which constitutes its essence,—the restraint upon the issue of paper currency by the states,—the authority of Congress to regulate trade, navigation, and intercourse among the states,—those principles and provisions in the Constitution which were intended to secure the rights of property in each of the states, and their enjoyment by intercourse among them all,—have been investigated, and settled upon a basis not to be shaken so long as the law shall retain any portion of our regard.

If I were to select any in particular from the mass of its

judgments, for the purpose of showing what we derive from the Constitution, and from the noble faculties which have been applied to its interpretation, it would be that in which the protection of chartered rights has been deduced from its provisions. The case of Dartmouth College is the bulwark of our incorporated institutions for public education, and of those chartered endowments for diffusive public charity, which are not only the ornaments but among the strongest defences of a nation. It raises them above the reach of party and occasional prejudice, and gives assurance to the hope, that the men who now live, may be associated with the men who are to live hereafter, by works consecrated to exalt and refine the people, and destined if they endure, to unite successive generations by the elevating sentiment of high national character.

In a thousand ways the decisions of this court, have given stability to the union, by showing its inseparable connection with the security and happiness of the people of the United States.

While we think with just affection, my fellow citizens, of that state at whose bosom we have been nurtured, whose soil contains the bones of our fathers, and is to receive our own, and reverence her for those institutions and laws, by which life is ennobled, and its enjoyments enlarged, far from us be that purblind vision, which can see nothing of our country beyond the narrow circle in which we stand. The union is our country. The government of the union is our own. It breathes our breath. Our blood flows in its veins. It is animated with the spirit and it speaks the voice of the whole people. We have made it the depository of a part of that liberty with which the valour of the revolution made us free; and we can never review the works of

this illustrious tribunal, since Chief Justice Marshall has been at its head, without gratitude to heaven, that it is the guardian of that part, which alone could enable us in our separate communities to destroy the value of the rest.

What were the states before the union? The hope of their enemies, the fear of their friends, and arrested only by the Constitution, from becoming the shame of the world. To what will they return when the union shall be dissolved? To no better than that from which the Constitution saved them, and probably to much worse. They will return to it with vastly augmented power, and lust of domination, in some of the states, and irremediable disparity in others, leading to aggression, to war, and to conquest. They will return to it, not as strangers who have never been allied, but as brethren alienated, embittered, inflamed and irreconcilably hostile. In brief time their hands may be red with each others blood, and horror and shame together may then bury liberty in the same grave with the Constitution. The dissolution of the union will not remedy a single evil, and may cause ten thousand. It is the highest imprudence to threaten it,—it is madness to intend it. If the union we have cannot endure, the dream of the revolution is over, and we must wake to the certainty that a truly free government is too good for mankind.

The decisions of the Supreme Court of the United States, have raised the renown of the country, not less than they have confirmed the Constitution. In all parts of the world, its judgments are spoken of with respect. Its adjudications of prize law, are a code for all future time. Upon commercial law it has brought us nearly to one system, befitting the probity and interests of a great commercial nation. Over its whole path, learning and intelligence and integrity have

shed their combined lustre. But its chief glory does and ever will radiate from those records, in which it has explained, defended and enforced the Constitution. These are a great national monument so complete, so ample, and so harmonious in its parts, that if all preceding debates and commentaries upon the Constitution were lost, the union would still have in the arguments of that court, sufficient to elucidate its principles and limits, and to explain nearly all that is doubtful in it.

The day of Chief Justice Marshall's appointment will ever be regarded as an epoch in the history of the Constitution. The rules of its interpretation were still to be settled, and the meaning of its doubtful clauses to be fixed, by that authority which under the Constitution is final, and some of them regarded nothing less than the action of states, and the government of a nation. To have erred, would have been to throw into disorder and convulsion the movements of the entire system. To have been suspected of incompetency, would have been to strike out the department from the hearts of the people, and to have left the union without a judiciary. What greater responsibility ever rested upon the judgments of a court? What greater triumph to human intellect and virtue, than effectually to accomplish so great a work? What nobler destiny than to be qualified and appointed for the service? What eulogy is equal to so great a name, as that of the man, who gave the last sands of life to his eightieth year in completing so much of it, and in tracing the plan of all that is to be done hereafter? Let it not be supposed that I claim for him the exclusive merit. His modesty would reject it. Justice withholds it. He has had by his side men now resting from their labours like himself, and men still living to continue them, who have contributed by their talents and learning to all that has been done, and will ever be honoured

for it by their country. But it is both their praise and his, that they have improved their own powers by the inspiration of his wisdom, and have been raised to their eminence, in part, by the attraction of his example. In him his country have seen that triple union of lawyer, statesman, and patriot, which completes the frame of a great constitutional judge; and if we add to it "the heart of the wise man," inspired with the love of God, of country, and of mankind, and showing it in the walks of private life, as well as on the judgment seat, while we have that which the course of the world very rarely exhibits, we have no more than, for the example of the world, has been bestowed upon our country.

When the venerable life of the Chief Justice was near its close, he was called in the 75th year of his age, to give, his parting counsel to his native state in the revision of her Constitution. A spectacle of greater dignity than the Convention of Virginia in the year 1829, has been rarely exhibited. At its head was James Monroe, conducted to the chair by James Madison and John Marshall, and surrounded by the strength of Virginia, including many of the greatest names of the union. The questions to be agitated were of the last importance to the people of that state, and divided them, as they were never before divided in any period of their history. The basis of representation, and the tenure of judicial office, the former in by far the greater degree, were the occasion of fearful collisions in the convention, threatening to break up the body into irreconcilable parties, and to spread the flames of civil discord through the state. It cannot be doubted that the presence and wisdom of these venerable persons, assuaged the violence of the contest, and contributed to reduce the general temper to that tone of compromise and mutual concession in which the tranquillity of a diversified people can alone be found. The reverence manifested for

Chief Justice Marshall, was one of the most beautiful features of the scene. The gentleness of his temper, the purity of his motives, the sincerity of his convictions, and his wisdom, were confessed by all. This was indeed a homage worthy of his virtue, and of the eminent men who paid it. He stood in the centre of his native state, in his very home of fifty years, surrounded by men who had known him as long as they had known any thing, and there was no one to rise up, even to question his opinions, without a tribute to his personal excellence. He spoke upon both the great questions, with brevity, and with no less than his usual power, consistently maintaining opinions which he had cherished from the outset of his life; but he was the counsellor of peace, and in the spirit of religious charity, regarded with catholic good will those who differed from him. Upon one occasion he said—"after the warm language (to use the mildest phrase) which has been mingled with argument on both sides, I heard with inexpressible satisfaction, propositions for compromise proposed by both parties in the language of conciliation. I hailed these auspicious appearances with as much joy, as the inhabitant of the polar regions hails the re-appearance of the sun after his long absence of six tedious months."—This was the affection of his heart; but the spirit of his understanding still divided truth from error, by a line as bright and distinct, as in the clearest hour of his meridian day. It was particularly on the question of judicial tenure, the subject upon which he could speak after probably more personal reflection and observation than any man living, that he poured out his heart-felt convictions with an energy that belongs to nothing but truth. The proposed Constitution, while it adopted for the judges of the Superior Courts the tenure of good behaviour, guarded by a clause against the construction which had in one instance prevailed, that the repeal of the law establishing the court, and by a mere

majority, should dissolve the tenure, and discharge the judge upon the world. In support of this clause, which was proposed by himself, and of the general principle of judicial independence, he spoke with the fervour and almost with the authority of an apostle. "The argument of the gentleman, he said, goes to prove not only that there is no such thing as judicial independence, but that there ought to be no such thing:—that it is unwise and improvident to make the tenure of the judge's office to continue during good behaviour. I have grown old in the opinion that there is nothing more dear to Virginia, or ought to be more dear to her statesmen, and that the best interests of our country are secured by it. Advert, sir, to the duties of a judge. He has to pass between the government, and the man whom that government is prosecuting,—between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in the performance of these duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security, and the security of his property, depends upon that fairness. The judicial department comes home in its effects to every man's fire side;—it passes on his property, his reputation, his life, his all. Is it not to the last degree important, that he should be rendered perfectly and completely independent, with nothing to control him but God and his conscience." "I acknowledge that in my judgment, the whole good which may grow out of this convention, be it what it may, will never compensate for the evil of changing the judicial tenure of office." "I have always thought from my earliest youth till now, that the greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary."

These sentiments are worthy of the profoundest consideration. They were the last legacy of his political wisdom, from an incorruptible patriot, and one of the wisest of men. Standing as it were on the verge of life, free from all mixture and stain of selfish motive, having nothing to hope, nothing to fear from men, they are the parting testimony of his pure and disciplined reason. They are worthy of being written on the tables of the heart; and if elsewhere they may be disregarded in the spirit of change, or in the lust of experiment, let them animate us to preserve what we have, and to transmit it to our children.

Fellow Citizens, this admirable man, extraordinary in the powers of his mind, illustrious by his services, exalted by his public station, was one of the most warm hearted, unassuming, and excellent of men. His life, from youth to old age, was one unbroken harmony of mind, affections, principles, and manners. His kinsman says of him—"He had no frays in boyhood. He had no quarrels or outbreaks in manhood. He was the composer of strifes. He spoke ill of no man. He meddled not with their affairs. He viewed their worst deeds through the medium of charity. He had eight sisters and six brothers, with all of whom, from youth to age, his intercourse was marked by the utmost kindness and affection; and although his eminent talents, high public character, and acknowledged usefulness, could not fail to be a subject of pride and admiration to all of them, there is no one of his numerous relations, who has had the happiness of a personal association with him, in whom his purity, simplicity and affectionate benevolence, did not produce a deeper and more cherished impression, than all the achievements of his powerful intellect." Another of his intimate personal friends has said of him, "In private life he was upright and

“scrupulously just in all his transactions. His friendships were ardent, sincere and constant, his charity and benevolence unbounded. He was fond of society, and in the social circle, cheerful and unassuming. He participated freely in conversation, but from modesty rather followed than led. Magnanimous and forgiving, he never bore malice, of which illustrious instances might be given. A republican from feeling and judgment, he loved equality, abhorred all distinctions founded upon rank instead of merit, and had no preference for the rich over the poor. Religious from sentiment and reflection, he was a christian, believed in the gospel, and practised its tenets.” This is the unbought praise of deep affection and intimate knowledge. It finishes his character in all his relations.

That with which a stranger was most struck in a first interview, was the charm of his most engaging simplicity. The reputation of his remarkable powers of mind was coextensive with our country. Every one who approached him for the first time, was prepared to find something in the carriage of his person, the tones of his voice, or the strain of his conversation, which should distinguish him as much from men in general, as he was raised above them by his station and intellect. But although these were extremely attractive and highly suitable, they did not display his mind so much as the benignity of his heart. There was in his daily manners an unconsciousness of what he was, or how he was estimated, and a freedom from effort, affectation and pretension, which makes the inscription he prepared for his monumental tablet, a perfect representation of the simplicity of him that lies beneath it. It records no more than his name and that of his deceased wife, with the date of his birth and marriage, and leaves a blank for the year and day of his death.

The world, my fellow citizens, has produced fewer instances of truly great judges, than it has of great men in almost every other department of civil life. A large portion of the ages that are past, have been altogether incapable of producing this excellence. It is the growth only of a government of laws, and of a political Constitution so free as to invite to the acquisition of the highest attainments, and to permit the exercise of the purest virtues, without exposure to degradation and contempt, under the frown of power. The virtues of a prince may partially correct the mischiefs of arbitrary rule, and we may see some rare examples of judicial merit, where the laws have had no sanction, and the government no foundation, but in the uncontrolled will of a despot; but a truly great judge belongs to an age of political liberty, and of public morality, in which he is the representative of the abstract justice of the people in the administration of the law, and is rewarded for the highest achievements of duty, by proportionate admiration and reverence. Of all the constitutions of government known to man, none are so favourable to the development of judicial virtue, as those of America. None else confide to the judges the sacred deposit of the fundamental laws, and make them the exalted arbiters between the Constitution and those who have established it. None else give them so lofty a seat, or invite them to dwell so much above the impure air of the world, the tainted atmosphere of party and of passion. None else could have raised for the perpetual example of the country, and for the crown of undying praise, so truly great a judge as JOHN MARSHALL.

THE END.

W. F. M.

ERRATUM.—In page 36, line 15 from top, for "John Marshall will ever stand the first and most illustrious," read, "John Marshall will ever stand among the first and most illustrious."











3 2044 044 500 577

THE BORROWER WILL BE CHARGED
AN OVERDUE FEE IF THIS BOOK IS NOT
RETURNED TO THE LIBRARY ON OR
BEFORE THE LAST DATE STAMPED
BELOW. NON-RECEIPT OF OVERDUE
NOTICES DOES NOT EXEMPT THE
BORROWER FROM OVERDUE FEES.

MAY 8 1994
WIDENER

MAY 1 1994

1170096

WIDENER

DEC 22 1996

BOOK DUE

No. 9115

